IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY SECOND DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NOs : 8830 of 2004 & 1736 of 2005

W.P.No.8830/2004

Between:

M.Jayaprakash, s/o. late Rajaratnam
Kasturiba Municipal Girls High School Eluru,

West Godavari District.

..... PETITIONER

AND

1 The Commissioner Eluru Municipality, Eluru, W.G. District.
2 The Chairman, Eluru Municipality, Eluru, W.G. District.
3 The District Educational Officer/President Panel Committee, Eluru,

W.G. District.
4 The Director, School Education, Government of A.P. Hyderabad.
5 The Regional Joint Director of School Education Government of

Andhra Pradesh, Kakinada, East Godavari District.
6 R.Suguna Devi, w/o. Ramakrishna Rao
A.R.D.C.K. Municipal High School, Eluru,

West Godavari District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue writ order or direction more particularly one in the nature of writ of "Certiorari" call for the records relating to order dated 4-3-2004 passed in O.A.No.2133/1999 by the Andhra Pradesh Administrative Tribunal and quash the same and further declare the proceedings in RC.No.1405/G3/95 dated 18-8-1998 issued by the 4th respondent as illegal, arbitrary and contrary to principles of natural justice and set aside the same and further direct the official respondents to continue me as Head master in the same place in the interest of justice.

Counsel for the Petitioner:MR.M.RATNA REDDY

Counsel for the Respondents 1 and 2 : MR.D.SRINIVASA RAO

Counsel for Respondent Nos. 3 to 5 : Government Pleader for Services-I

Counsel for Respondent No.6 : Sri Y.Venkata Sastry

WRIT PETITION NO : 1736 of 2005

Between:

M. Jayaprakash, S/o. Late Rajaratnam,
Kasturba Municipal Girls High School, Eluru,

West Godavari District.

..... PETITIONER

AND

1 The Commissioner Eluru Municipality, Eluru, W.G. District.
2 The Chairman, Eluru Municipality, Eluru, W.G. District.
3 The District Educational Officer/President Panel Committee, Eluru,

W.G. District.
4 The Director, School Education, Government of A.P. Hyderabad.
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A.R.D.C.K. Municipal High School, Eluru,

West Godavari District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue Writ order or direction more particularly one in the nature of Writ of " Certiorari" calling for the records relating to order of the Andhra Pradesh Administrative Tribunal dated 04-03-2004 passed in O.A.No.1447/1999 and quash the same as unjust and with out any basis and consequently direct the respondents 1 to 5 to continue the petitioner as Head master with all consequential benefits in the interest of justice.

Counsel for the Petitioner:MR.M.RATNA REDDY

Counsel for the Respondent Nos.1 and 2 : MR.S.NAGESWARA REDDY

Counsel for the Respondents 3 to 5 : Government Pleader for Services-I

Counsel for the Respondent No.6 : None appeared

The Court made the following :

COMMON ORDER:

Aggrieved by the Common Order made in O.A.No.1447/99, V.M.A.No223/99, C.A.No.263/99 and O.A.No.2133/99, dated 4-3-2004, the writ petitioner/Sri M.Jayaprakash had invoked the certiorari jurisdiction of this Court by filing the present Writ Petitions. The controversy is in relation to seniority between the writ petitioner/Sri M.Jayaprakash, who is now working as Head Master, and 6th respondent/Smt.R.Suguna Devi, now a retired School Assistant.

2. Heard Sri Ratna Reddy, Srinivasa Rao, Venkata Sastry, Nageshwara Reddy and Government Pleader for Services-I.

3. Submissions at length were made by the respective Counsel pointing out to the impugned order, the reliefs prayed for in the O.As., pleadings of the parties, findings recorded by the A.P. State Administrative Tribunal, in short referred to as "Tribunal" for the purpose of convenience hereinafter, and also the order made by the District Educational Officer/3rd respondent, dated 30-4-1990 and the order made by the Director of School Education/4th respondent dated 18-8-1998. The Tribunal allowed O.A.No.1447/99 filed by the 6th respondent/Smt.R.Suguna Devi and dismissed O.A.No.2133/99 filed by the writ petitioner/Sri M.Jayaprakash.

4. The writ petitioner/Sri M.Jayaprakash was initially appointed as a School Assistant on 7-12-1973 in the P.S. Gangapuram, West Godavari District and his services were regularized and he was posted to Eluru Municipality on 5-9-1975. The probation of the writ petitioner/Sri M.Jayaprakash also had been declared as per the Rules. The 6th respondent/Smt.R.Suguna Devi, a B.Ed. School Assistant, was appointed on 12-12-1969 in a School in Krishna District and was transferred by Government in G.O.Rt.No.306, MA, dated 5-4-1982 and was posted to Eluru Municipality in the existing vacancy without prejudice to the seniority and service of all the

teachers already working in Eluru Municipal Council subject to certain conditions on compassionate grounds and taking last rank among all the teachers of the cadre in Eluru Municipality and thus the 6th respondent/Smt.Smt.R.Suguna Devi joined as a Science B.Ed. Assistant on 13-12-1983 at Eluru Municipality and her services were reckoned from the date of joining.

5. It may be relevant to have a look at the said G.O.Rt.No.306, MA, dated 5-4-1982 which specifies as hereunder :

GOVERNMENT OF ANDHRA PRADESH

ABSTRACT

ESTABLISHMENTS – Education – Smt.R.Suguna Devi, B.Ed. Assistant, Zilla Parishad High School, Gannavaram – Request for transfer to Eluru Municipality – Orders – Issued.

HOUSING, MUNICIPAL ADMINISTRATION & URBAN DEVELOPMENT DEPT.

G.O.Rt.No.306, M.A. Dated : 5-4-1982

Read the following :

1. From Smt.R.Suguna Devi, Representation dated 19-3-01.
2. From the Deputy Chief Executive Officer, Zilla Parishad, Chilakaluripeta Lr.No.7283/81 B2, dated 8-7-81.
3. From the Commissioner, Eluru Municipality, Lr.No.C-2/1497/81, dated 20-8-81.
4. From the Director of Municipal Administration Lr.No.49288/81-K3, dated 8-1-82.

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ORDER:

In the circumstances as stated in the references read above, the Government direct the Smt.R.Suguna Devi, B.Ed. Assistant, Zilla Parishad High School, Gannavaram, be transferred at her request to Eluru Municipality for appointment in any of the existing vacancies without prejudice to the seniority and service of the teachers already working in Eluru Municipal Council, on compassionate grounds and at her volition regarding pensionary benefits that may be available to her subject to the following conditions :-

i. That the individual is not eligible for any transfer traveling allowance, D.A. or joining time;

ii. That she should take last rank among all the teachers of that cadre in Eluru Municipality;

iii. That the pay drawn by her in Zilla Parishad High school will be protected on her appointment in Eluru Municipal school; and

iv. That she shall satisfy the qualifications etc., prescribed for appointment to the post of Teacher in the Municipality.

2. The Commissioner, Eluru Municipality is requested to appoint Smt.R.Suguna Devi, B.Ed. Assistant in a vacant post equivalent to her grade in one of the schools in Eluru Municipality.

3. This order issued with the concurrence of Panchayat Raj Department.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

G.Venkataramana Reddy

Secretary to Government (Incharge)

Condition No.(ii) of the said order specifically says :

“That she should take last rank among all the teachers of that cadre in Eluru Municipality”

6. It was averred in the affidavit by the writ petitioner/Sri M.Jayaprakash that G.O.Ms.No.1096, dated 17-11-1978 regulates preparation of panels by respondents 1 to 5 annually for all eligible candidates according to their merit and ability for the purpose of promotion to the post of Headmaster and in pursuance of the order of the Government the Head Master Panel Committee met on 17-1-1990 to prepare the panel of Head Masters for the years 1986-87 and 1987-88. The 6th respondent/R.Suguna Devi was included in the panel of Head Master at Eluru in Group-B for the years 1986-87 and 1987-88. The writ petitioner/Sri Sri M.Jayaprakash made a representation to the 3rd respondent/District Educational Officer to include his name in the panel since he passed M.A. Degree in July 1989 itself prior to the preparation of the panel and in view of the fact that the writ petitioner/Sri M.Jayaprakash is senior to the 6th respondent, taking into consideration the seniority of the teachers in Eluru Municipal council on the representation made to the 3rd respondent/District Educational officer, after calling for the service registers and on due verification of service particulars and also the qualifications, the writ petitioner was declared senior to the 6th respondent by the 3rd respondent/District Educational officer in proceedings Rc.No.52/A9-88 dated 30-4-1990. The writ petitioner/Sri M.Jayaprakash was promoted and posted as Head Master of

Kasturiba Kasturiba Municipal Girls School by the 1st respondent/Commissioner, Eluru Municipality in Rc.No.7752/C-3/85, dated 7-8-1995. The 6th respondent/Smt.R.Suguna Devi preferred Appeal to the 4th respondent/Director of School Education after a long lapse of time and by order dated 18-8-1998, the 4th respondent/Director of School Education had disturbed the prior order made by the 3rd respondent referred to supra and the said proceeding dated 18-8-1998 of the 4th respondent/Director of School Education reads as hereunder :

PROCEEDINGS OF THE DIRECTOR OF SCHOOL EDUCATION, A.P. HYDERABAD

Rc.No.1405/G3/95 Dated : 18-8-98

Sub:- Secondary Education – Eluru Municipaltiy – Preparation of

Head Masters Panel during 1986-87 and 1987-88 – Irregularities committed by the Management – Orders – Issued.

Read: 1. Appeal of Smt.R.Suguna Devi, Mpl. High School, Eluru dt.21-7-97.

2. Rc.No.7752/C-2/85, dt.7-8-95 of the Commissioner,

Eluru Municipality, Eluru, W.G. Dist.

3. G.O.Ms.No.1096, Health, Mpl. Admn. Dept., dt.17-11-78.

4. Lr.Rc.No.68/B3/96, dt.8-10-97 of the Regl. Jt. Director

of School Education, Kakinada, E.G. Dist.

-:o0o:-

In the reference 1st cited, an appeal is filed against the proceedings of the Commissioner, Eluru Municipality in reference 2nd cited above. The appeal was admitted and the Regional Jt. Director of School Education, Kakinada was asked to enquire into the content of appeal. The Regl. Jt. Director of School Education, Kakinada has submitted his report on 8-10-97 in reference 4th cited.

The gist of the allegation is that the Panel for Head Master promotion prepared on 17.1.90 for the years 1986-87 and 1987-88 was tampered with by the Management by promoting Sri M.Jaya Prakash on 7.8.95 without exhausting the approved panel. The action of Management in having changed the Panel prepared by the Panel Committee is questioned in the appeal.

Upon perusing the available records and the report of the Regional Jt. Director of School Education, Kakinada, it is abundantly clear that the Management had committed irregularity in having by passed the Panel in issuing the order dated 7.8.95. The impugned order of the Eluru Municipality is therefore found to be devoid of merits in logic. The order is therefore set aside with immediate effect.

Commissioner, Eluru Municipality is directed to redraft the Panel for the year 1994-95 as per Rules within 15 days from the date of receipt of this order.

R.SUBRAHMANYAM

DIRECTOR OF SCHOOL EDUCATION

7. The 6th respondent/Smt.R.Suguna Devi filed O.A.No.1447/99 praying for a direction to consider her case for promotion to the post of Panel Grade Head Master by redrafting the panel for 1994-95 by

giving effect to the proceedings No.1405/G3/95 dated 18-8-1998 of the 4th respondent/Director of School Education by declaring the continuance of the 6th respondent as Panel Grade Head Master as being void and nonest in the eye of law and accord all consequential benefits as regards seniority, arrears of pay etc. V.M.A.No.223/99 was filed to vacate the interim order. C.A.No.263/99 was filed to punish the respondents for violating the order. The writ petitioner/Sri M.Jayaprakash filed O.A.No.2133/99 before the Tribunal praying for calling for records relating to proceedings Rc.No.1405/G3/95, dated 18-8-1998 issued by the Director of School Education/4th respondent and to set aside the same by holding it as illegal, arbitrary, discriminatory and to pass such other suitable orders, and the Tribunal at paras 17 and 18 of its order held as hereunder :

> "On a careful consideration of the submissions made and on perusing the entire material on record, it appears that there is some mistake committed by the Respondents in not considering the service of the applicant from the date of her original appointment in Krishna District and she was considered as junior after transfer from Krishna Municipality to Eluru Municipality. Even though a condition was imposed that she should take last rank among the teachers in Eluru Municipality, this cannot be said to be correct since prior to 1998 the post of School Assistant is a Zonal post and only from 1990 onwards the said post is treated as a District cadre post. So, the seniority of the applicant should be reckoned not only from the date of her joining in Eluru Municipality, but also from the date of her appointment in Krishna District. At best, the transfer of the applicant from one municipality to another can at best be treated as a transfer from one district to another in the same zone.
>
> Coming to the other aspect i.e., giving seniority to the applicant and R6, there is no dispute with regard to the fact that the

applicant passed P.G. Degree of M.Ed. long prior to the preparation of panels of Headmasters and R6 passed the same only in July, 1989. In the panel year 1986-87 the name of the applicant was included as per her seniority and qualifications and by that time she secured her M.Ed., degree much before the acquisition of the same by R6. By wrongly interpreting the G.O.Ms.No.1096, R6 was treated as senior to the applicant and he was promoted as Panel Grade Headmaster. Aggrieved by the orders of the panel committee, the applicant made an appeal to the Director who ordered enquiry into the matter. The RJd enquired into the matter and submitted a report stating that the seniority of the individuals in the feeder category of B.Ed. Assistants has not been taken into account and only basing on the qualifications acquired prior to the preparation of the panels in Eluru municipality, promotions to the post of Panel Grade Head were given. Realising the mistake crept in, the Director set aside the promotion of R6 as Panel Grade Headmaster and issued the impugned orders ordering redrafting of panels. Further nowhere in G.O.1096 it is stated that the seniority of the incumbents has to be ignored and the acquisition of qualifications alone has to be taken into consideration while making promotions to the post of Panel Grade Headmasters. Further, when the name of the applicant was included in the panel year 1986-87 there is no reason forthcoming in the counter affidavit why she was ignored for promotion. The only reason put forward in the counter is that qualifications of the incumbents were taken into account and basing on the same R6 was treated as senior and he was promoted as Panel Grade Headmaster which in fact is not correct and against the rules".

8. As can be seen from condition No.(ii) of G.O.Rt.No.306 which had been referred to supra, the 6th respondent/Smt.R.Suguna Devi had accepted the transfer with eyes wide open relating to the condition imposed on reckoning her seniority and hence at a later stage definitely she is estopped from raising such objection in this regard and by accepting the said condition imposed at the time of transfer it

can be taken that the 6th respondent/Smt.R.Suguna Devi had voluntarily waived her right to claim the seniority in the light of the benefit which she derived by virtue of having the transfer. It is no doubt true that it is stated that the benefits flowing out of the order of the Tribunal had been already received by the 6th respondent/Smt.R.Suguna Devi who is now retired. Obviously this appears to be a subsequent event. In service jurisprudence where there is a clear identified fight just like in the present case between the writ petitioner and the 6th respondent/Smt.R.Suguna Devi relating to the claim of seniority to the office of the Head Master or Head Mistress as the case may be, the non-putting of the writ petitioner/Sri M.Jayaprakash on notice by the appellate authority/4th respondent while acting on the appeal filed by the 6th respondent/Smt.R.Suguna Devi, is bad in law. Apart from this aspect of the matter, on the material available on record, the 6th respondent/Smt.R.Suguna Devi had invoked the jurisdiction of the appellate authority after a long lapse of time and in pursuance thereof, the order dated 18-8-1998 had been made by the 4th respondent. The fundamental concept of principles of natural justice, otherwise popularly known as fair play in action, is a concept of very ancient origin, as ancient as human civilization which is well reflected in the natural law by Roman jurists and also from the days of Adam to Kautilya's Arthasastra. The growth of this concept need not be further emphasized. It is suffice to state

that the aim is to secure justice and prevent miscarriage of justice. It is neither a static concept nor extra-legal though extra-legislative in character. In any kind of adverse order involving civil consequences of the affected party, fair play demands an opportunity of being heard to be given to such a party. The law is well settled in this regard. There is no serious controversy as a question of fact on this aspect that such opportunity was not afforded to the writ petitioner while the appellate authority made the order on the strength of the appeal preferred by the 6th respondent/Smt.R.Suguna Devi after a long lapse of time. The service of the respective parties for the purpose of reckoning the seniority may have to be reckoned in the light of the conditions specified in G.O.Rt.No.306 and also on the strength of the joining date of the 6th respondent/Smt.R.Suguna Devi in the Eluru Municipality and definitely not prior thereto. Viewed from any angle, this Court is of the considered opinion that the 6th respondent/Smt.R.Suguna Devi cannot be considered to be senior to the writ petitioner/Sri M.Jayaprakash in the light of the peculiar fact situation. Further, the order made by the appellate authority/4th respondent after a long lapse of time without even observing the principles of natural justice is bad in law and definitely the same cannot be sustained. Hence, the Tribunal erred in allowing the O.A. filed by the 6th respondent/Smt.R.Suguna Devi and dismissing the

O.A. filed by the writ petitioner/Sri M.Jayaprakash.

9. For the foregoing reasons, the writ petitioner/Sri M.Jayaprakash is bound to succeed and accordingly the common order made in O.A.No.1447/99, V.M.A.No223/99, C.A.No.263/99 and O.A.No.2133/99, dated 4-3-2004 by the Tribunal is hereby quashed and the Writ Petitions are allowed. No order as to costs.

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Justice G.Bikshapathy

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Justice P.S.Narayana

Date : -2-2005

L.R. copy to be filed : YES / NO

AM

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on Tuesday, Twenty Second Day of February, Two Thousand and Five.

ASSISTANT REGISTRAR

To

One fair copy to Hon'ble Sri Justice G.Bikshapathy (for his Lordship's kind perusal)

One fair copy to Hon'ble Sri Justice P.S. Narayana (for his Lordship's kind perusal)

1 The Commissioner Eluru Municipality, Eluru, W.G. District.
2 The Chairman, Eluru Municipality, Eluru, W.G. District.
3 The District Educational Officer/President Panel Committee, Eluru,

W.G. District.
4 The Director, School Education, Government of A.P. Hyderabad.
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Andhra Pradesh, Kakinada, East Godavari District.
6**. C.Cs. to Government Pleader for Services-I,**

High Court of A.P.

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